

Pitkin County 1994

PITKIN COUNTY

"ARTICLE V"

SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT

Sec. 5-0. Short Title.

This article shall be known as and it may be cited as the "Pitkin County Clean Indoor Air Act".

Sec. 5-1. Legislative Intent and Purposes.

The Board of County Commissioners finds that the smoking of tobacco, or any other weed or plant, is a form of air pollution, a material annoyance, inconvenience, nuisance, discomfort and a health hazard to those who are present in confined spaces, and in order to serve public health, safety and welfare the declared purpose of this article is to control and limit the smoking of tobacco, or any weed or plant, in public places and places of employment as hereinafter set forth. The Board of County Commissioners intends that the restrictions and limitations of this article be viewed as minimum standards, and should not be construed as limiting in any way the authority of persons in control of a public place from prohibiting smoking within their establishment altogether.

Sec. 5-2. Definitions.

(a) "Bar area" An area primarily devoted to serving alcoholic beverages and within which the service of food is only incidental to the consumption of such beverages. Although the restaurant may contain a bar, the "bar area" shall not include the restaurant/dining area. The Pitkin County Board of County Commissioners (or its designee) may extend the "bar area" to encompass a larger area upon a demonstration by the owner of an establishment that such area is primarily devoted to the serving of alcoholic beverages (such as a bar room, cocktail lounge or similar facility) and the service of food is only incidental to the consumption of such beverages.

(b) "Dining area" means any enclosed area containing a counter or tables upon which meals are served.

(c) "Public place" means any enclosed area to which the public is invited or in which the public is permitted, including, but not limited to: banks, education facilities, health facilities, hospitals, jails, theater, auditorium, public transportation facilities, reception areas, lobbies, food service establishments, retail stores, retail service establishments, galleries, and waiting rooms.

(d) "Smoking" means the combustion of any cigar, cigarette, pipe, or similar article, using any form of tobacco or other combustible substance in any form.

(e) "Theater and Auditorium" means any enclosed area devoted to or used for exhibiting motion pictures or presenting theatrical performances, lectures or like entertainment.

(f) "Employee" means any person who is employed by any employer in consideration for wage, salary or other monetary compensation or profit.

(g) "Employer" means any person, partnership or corporation, including municipal corporation or other legal entity, who employs the services of any person(s) in Pitkin County.

(h) "Place of Employment" means any interior area under the control of an employer which employees normally frequent during the course of employment, including, but not limited to, work area, employee lounges, conference rooms, and employee cafeterias.

Sec. 5-3. Smoking Prohibited in Public Places.

Smoking is prohibited in public places, including but not limited to the following:

(a) Elevators. Smoking is prohibited and is unlawful within elevators in buildings generally used by or open to the public, including elevators in office, hotel, and multi-family buildings.

b) Hospitals and Health care Facilities. Smoking is prohibited and is unlawful in public areas of health care facilities and hospitals, as defined in Section 25-3-101, C.R.S., as it may be amended from time to time, including waiting rooms, public hallways and lobbies.

(c) Public Meeting Rooms. Smoking is prohibited and is unlawful in hearing rooms, conference rooms, auditoriums, chambers, and places of public assembly in which public business is conducted, which requires or provides direct participation or observation by the general public.

(d) Public Restrooms. Smoking is prohibited and unlawful in public restrooms.

(e) Hallways. Smoking is prohibited in the hallways of public places.

(f) Food Service Establishments. Smoking is prohibited and is unlawful in the dining area of every publicly or privately owned food service establishment, including but not limited to a coffee shop, cafeteria, short-order cafe, luncheonette, sandwich shop, soda fountain, restaurant, or other eating establishment serving food; except under the following circumstance where smoking may be permitted at the option of the owner of the establishment:

(1) Any enclosed rooms which are being used for private functions.

(2) The smoking of cigarettes in any "bar area" as defined in Sections 5-2 and 6.2. The smoking of pipes and cigars shall not be permitted in such areas.

(g) Retail Stores. Smoking is prohibited and is unlawful in all public areas of retail stores, including grocery stores, retail service establishments, retail food production establishments, and drug stores.

(h) Hotel and Motel Lobbies.

(i) Theaters and Auditoriums. Smoking is prohibited in all theaters or nightclubs except when these are used for private functions.

Sec. 5-4. Regulation of Smoking in Places of Employment

The following regulations apply to places of employment.

(a) Within ninety days of the effective date of this resolution each employer shall adopt, implement, and maintain a written smoking policy which shall contain at a minimum the following:

(1) Prohibition of smoking in employer conference and meeting rooms, classrooms, auditoriums, restrooms, medical facilities, hallways, elevators, and behind service counters.

(2) Provision and maintenance of no smoking areas in cafeterias, lunchrooms and employee lounges that effectively provide a smoke-free environment for nonsmoking employees.

(3) Any employee in the place of employment shall be given the right to designate his or her work area as a nonsmoking area and to post it with appropriate signs or sign. The policy adopted by the employer shall

include a definition of the term "work area" which gives preferential consideration to nonsmokers. No nonsmoking employee shall be required to enter or work in a smoking work area.

(4) In any dispute arising in the work place under the smoking policy, the rights of the nonsmoker shall be given precedence.

(5) Except where other signs are required, whenever smoking is prohibited, conspicuous signs shall be posted so stating.

(b) The smoking policy shall be communicated to all employees within three weeks of its adoption and permanently posted in a prominent place.

(c) Notwithstanding the provisions of subsection (a) of this section, every employer shall have the right to designate any place of employment as a nonsmoking area.

(d) This section is not intended to regulate smoking in the following places under the following conditions:

(1) A private residence which may serve as a place of employment.

(2) A place of employment which is private, enclosed, physically separated, and ventilated to the outside, occupied exclusively by smokers, excepting places in which smoking is prohibited by fire marshal or by other law, ordinance or regulation.

(e) An employer shall post "No Smoking" signs in any area designated as a nonsmoking area and "Smoking Allowed" signs in any area designated a smoking area.

Sec. 5-5. Posting of Signs.

To advise persons of the existence of "No Smoking" or "Smoking Permitted" areas, signs shall be posted in the English language as follows:

(a) In public places where no smoking is permitted pursuant to this article, a sign using the words "No Smoking" and/or the international no smoking symbol shall be conspicuously posted either on all public entrances or in a position clearly visible an entry into the establishment.

(b) In public places where certain areas are designated as smoking areas pursuant to this resolution, the statement "No Smoking Except in Designated Areas" shall be conspicuously posted in a position clearly visible at each and every entry into the establishment. In addition, the person having the authority to manage and control any area designated as a nonsmoking area pursuant to this article, shall post or cause to be posted and prominently displayed, and shall maintain "No Smoking" signs in conspicuous locations within said areas. All such signs shall clearly and conspicuously recite the phrase "No Smoking" and/or use the international no smoking symbol. The signs shall be posted not less than 5 feet above the floor nor more than 8 feet above floor level and shall be of sufficient number and location to cause the message of at least one of the signs to be clearly visible, legible, and readable from each area in the establishment.

Sec. 5-6. Exceptions

Sec. 5-6.l. "No Smoking" areas are not required, although they are encouraged, in private areas; hotel, motel, and lodge meeting and assembly rooms rented to guests; areas and rooms while in use for private social functions, the facilities of a private or members only club/organization, private hospital rooms, psychiatric or psychological counseling facilities or stores that deal exclusively in tobacco products and accessories. A private or members only club/organization that serves alcohol must possess a State of Colorado Club Liquor License to claim this exception.

Sec. 5-6.2. Within a "bar area". If smoking is permitted in a bar area by the establishment owner, the bar area must be physically separated by solid walls that extend from floor to ceiling. There may be a door opening from the nonsmoking area into the smoking area. The door must not be held open for longer than the time it takes for customers to enter or exit the bar. Further, there must be an approved independent ventilation system serving the smoking area which has no direct or indirect connection to the ventilation system serving the nonsmoking area. There must be no sharing of common return air ducts nor air exhaust ducts. Air intake duct openings serving the nonsmoking area must be a sufficient distance away from smoking area exhaust duct openings to prevent mixing of contaminated air being vented out with clean air being drawn into the establishment.

Sec. 5-6.3. Any owner or manager of a business or other establishment subject to this article may apply to the Director of the Environmental Health Department for an exception or modification of the provisions of this article due to unique or unusual circumstances or conditions. It will be the burden of the applicant to show that the failure to comply with the provision for which the exemption is requested will not result in a danger to public health or annoyance, inconvenience or discomfort.

Sec. 5-7. Enforcement.

Sec. 5-7.1 The County Manager or the County Manager's designee shall be responsible for compliance with this article with regard to facilities which are owned, operated, or leased by Pitkin County.

Sec. 5-7.2 The owner, operator, or manager of any facility, business or agency shall post or cause to be posted all "No Smoking" signs required by this article. Owners, operators, manager or employees of same shall be required to verbally inform persons violating this article of the provisions thereof. The duty to inform such violator shall arise when such owner, operator, manager or employee of same becomes aware of such violation, and shall be their sole enforcement obligation hereunder.

Sec. 5-7.3 Any citizen who desires to register a complaint under this article may initiate enforcement with the Aspen/Pitkin Environmental Health Department.

Sec. 5-7.4 No person shall be discriminated or retaliated against in any way for protecting themselves against environmental tobacco smoke under the terms of this ordinance either in public or in the workplace, for requesting a non-smoking work area, or for filing a complaint or otherwise reporting a violation of this ordinance.

Sec. 5-7.5 Should a person disagree with a decision made by the Aspen/Pitkin Environmental Health Department relative to this resolution, that person may appeal the decision to the Clean Air Advisory Board at a regularly scheduled meeting of that Board.

Sec. 5-7.6 The Aspen/Pitkin Environmental Health Department may enforce the provisions of this article by either of the following actions:

(a) Serving notice requiring correction of any violation of this article.

(b) Requesting the County Attorney to initiate appropriate enforcement proceedings, including, without limitation, the initiation of a complaint for imposition of penalties or injunctive relief, abatement, or other appropriate action to prevent, enjoin, abate or remove such violation.

Sec. 5-7.7 Any person violating this ordinance shall, upon conviction, be punished by a fine of not more than three hundred dollars (\$300.00), for each separate offense, and may be enjoined from any further or

continued violation thereof. Each day any violation of this article shall continue shall constitute a separate offense. In addition to other penalties, any violation of this ordinance may be enjoined or abated by the Board of County Commissioners by appropriate legal action.

Sec. 5-8.8 Any remedies provided for herein shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law.

Section 2

The regulations and amendments set forth in this resolution shall become effective thirty (30) days after the date of publication after final passage. This resolution will apply in the unincorporated areas of Pitkin County; and

Section 3

If any section, subsection, sentence, clause, phrase or portion of this resolution is for any reason held invalid or unconstitutional in a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portions thereof.